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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/413,821	10/07/1999	PHILIP KELLER	52352-356	2466
20277	7590	06/22/2006		
MCDERMOTT WILL & EMERY LLP 600 13TH STREET, N.W. WASHINGTON, DC 20005-3096			EXAMINER NGUYEN, DUNG X	
			ART UNIT	PAPER NUMBER
			2611	

DATE MAILED: 06/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/413,821

Applicant(s)

KELLER, PHILIP

Examiner

Dung X. Nguyen

Art Unit

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 - 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 - 8 is/are rejected.
- 7) ☒ Claim(s) 9 - 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 October 1999 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Response to Arguments

1. Applicant's arguments filed on October 04, 2005 have been considered and persuasive. However, upon further consideration, the new ground of rejection(s) has been made.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. **Claims 1 - 3, and 5 - 8 are rejected** under 35 U.S.C. 102(e) as being anticipated by Ang (US 6,424,630 B1).

6. The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Regarding claim 1, Ang teaches (figure 4);

- Setting a DC voltage at the output terminal (74, 76) for supplying a transmit signal of a prescribed level (column 2, lines 26 – 34) to the residential twisted pair wiring (column 3, line 41).
- Comparing (38c) a control value representing DC level with a predetermined threshold level (column 8, lines 11 – 14); and
- Control (70) the output driver until the controlled value is equal to the threshold level (abstract, lines 26 – 34 and column 8, lines 16 – 36).

Regarding claim 2, as followed by the limitations analyzed in claim 1, Ang further teaches that the output driver is controlled during initialization of the transceiver (column 8, lines 59 – 65).

Regarding claim 3, as followed by the limitations analyzed in claim 1, As shown in figure 3 of Ang, the signal is transmitted/received through complementary terminals (see the terminals connecting to 30 and 52, which inherently teach the claim high power level and low power level. The inherency may be illustrated by TxRx_Pos and TxRx_Neg in figure 3 of the instant application (Note that figure 3 of Ang is exactly the same as figure 3 of the instant application).

Regarding claim 5, Ang teaches (figure 4);

- An output driver (74, 76) for supplying a transmit signal of a prescribed level to the residential twisted pair wiring; (column 7, lines 55 – 63, column 2, lines 31 – 35, and column 3, line 41).
- An output drive control (70) for comparing (38c) a DC level set at the output of the output driver with a predetermined threshold signal. DC level to control the output driver so as to maintain the transmit signal at the prescribed level (abstract, lines 26 – 34 and column 8, lines 16 – 36).

Regarding claim 6, as followed by the limitations analyzed in claim 5, Ang further discloses that wherein the output drive control comprises a comparator circuit (38c) for comparing a controlled signal for comprising representing the DC level set (column 7, lines 55 – 63) with the threshold signal (column 8, lines 11 – 14).

Regarding claim 7, as followed by the limitations analyzed in claim 6, Ang further discloses that wherein the output drive control comprises a drive control circuit (70, column 7, lines 55 - 63) responsive to the comparator circuit (38c) for controlling the output driver until the control signal is equal to the threshold signal (abstract, lines 26 – 34 and column 8, lines 16 – 36).

Regarding claim 8, as followed by the limitations analyzed in claim 7, Ang further discloses that the transceiver comprising input circuitry for receiving (30 in figure 3) an incoming signal from the residential wiring (column 3, line 41).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claim 4 is rejected** under 35 U.S.C. 103(a) as being unpatentable over Ang (US patent # 6,424,630 B1), and further in view of Edson (US patent # 6,526,581 B1

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Regarding claim 4, as followed by the limitations analyzed in claim 1, Ang teaches a physical layer transceiver of a home network situation but does not specify that wherein the output driver is controlled an output drive level required by the HPNA specification

However, Edson discloses (figure 1) that providing the output driver being controlled an output drive level required by the HPNA specification (column 7, lines 26 – 67).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to be able to combine Ang's teaching and Edson's teaching so as to comply with the HPNA standard.

Allowable Subject Matter

9. **Claims 9 and 10 are objected** to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Contact Information

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dung X. Nguyen whose telephone number is (571) 272-3010. The examiner can normally be reached on Monday through Friday from 8:00 AM to 16:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Fan. Chieh M. can be reached on (571) 272-3042. The fax phone numbers for this group is (571) 273-3021.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2600.

DXN

June 06, 2006



**CHIEH M. FAN
SUPERVISORY PATENT EXAMINER**